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## **LATENT DEFECTS: NAVIGATING THE DEFECTS LIABILITY PERIOD AND LEGAL ACTION DEADLINES FOR HOMEBUYERS IN MALAYSIA**

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### **Abstract**

This article provides a comprehensive understanding of latent defects in real property construction and a guide for homebuyers to navigate the defects liability period and legal action deadlines in Malaysia. Latent defects, hidden flaws that may emerge over time, pose significant risks to homebuyers. By uncovering the nature and implications of these defects, this article highlights the importance of recognising and addressing them within the defect liability period. It also explores the legal action deadlines set by the limitation legislation, emphasising the need to understand and adhere to these time limits for seeking remedies. This article serves as a valuable guide for homebuyers purchasing real properties from housing developers, ensuring they are equipped to identify and address latent defects, make effective use of the defect liability period, and initiate legal actions within the prescribed timelines.

**Keywords:** Defect Liability Period, Latent Defects Claims, Housing Developers, Limitation Act

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## **INTRODUCTION**

In the realm of purchasing newly constructed properties, homebuyers anticipate a dwelling that is free from defects and safe for habitation. However, beneath the surface of the property, there are hidden risks known as latent defects, which may not be immediately noticeable but have the potential to appear and cause significant problems over a certain period of time. Understanding the concept of latent defects is of paramount importance for homebuyers, as it empowers them to effectively navigate the defects liability period and comply with legal action deadlines. This article aims to explain the topic of latent defects in constructed properties, providing insights into their characteristics, consequences, and the crucial need for prompt detection and resolution. In addition, it analyses the defects liability period prescribed under the Housing Development (Control and Licensing) Act 1966 (Act 118), the allocated timeframe during which developers hold responsibility for addressing defects after delivery of vacant possession to the homebuyers. It also explores the legal action deadlines prescribed by the Limitation Act 1953 (Act 254), which establishes time limits, particularly for initiating legal actions pertaining to latent defects. By providing a comprehensive understanding of latent defects, the defects liability period, and legal action deadlines, this article equips developers, homebuyers, legal practitioners, and policymakers with valuable guidance to navigate and refine the process of resolving latent defects claims.

## **LITERATURE REVIEW**

Latent defects in real property construction have been a subject of concern and research in various contexts. Previous studies have highlighted the impact of latent defects on the structural integrity, safety, and aesthetic appeal of real properties (Chong & Low, 2006; Ali & Wen, 2011). It is essential to understand the causes, consequences, and potential mitigation measures to effectively address latent defects (Hassan et al., 2022) where a comprehensive legislation plays crucial roles in regulating real property construction and addressing defects (Wah, 2018). Previous literature also highlights issues in relation to poor workmanship, substandard materials, and construction processes which led to defects in real property (Abdullah et al., 2017a; Wena et al., 2017).

In Malaysia, Act 118 is a significant piece of legislation that aims to protect homebuyers and ensure construction quality (Sufian & Rahman, 2008). The Act provides provisions related to warranties, defect rectification, and developer's responsibilities. Additionally, Act 254 establishes time limits for legal actions, including claims for construction defects. Previous research has extensively explored the subject of latent defects in the context of constructed properties, including studies conducted in Malaysia, shedding light on various

aspects related to their identification, impact, and the legal frameworks surrounding them (Fatt, 2021).

In a Malaysian study conducted by Sibly et al. (2011) examined the occurrence and characteristics of latent defects in residential buildings within the local context. The research emphasised the need for homebuyers in Malaysia to be aware of these latent defects during the defect liability period and the importance of timely reporting to ensure effective resolution. Abdullah et al. (2017b) investigated the conduct of vendors and purchasers indirectly by analysing judicial rulings from Malaysia, Australia, and the United States. The cases reviewed demonstrate that buyers often neglect their obligation to perform pre-purchase inspections, while some vendors have been found to hide property defects and deceitfully misrepresent property conditions actively. The paper proposes consumer education initiatives targeting both vendors and purchasers, along with advocating for expanding the jurisdiction of entities such as the Tribunal for Homebuyers Claims to encompass disputes related to property conditions.

The above-mentioned studies conducted in Malaysia collectively highlight the importance of recognising and addressing latent defects in the local construction industry. They emphasise the significance of navigating the defects liability period and complying with the relevant legal action deadlines stipulated by Malaysian laws and regulations. By drawing on these studies, this article aims to provide valuable insights and guidance for homebuyers in Malaysia, enabling them to effectively address latent defects, comply with legal requirements, and protect their interests in the context of constructed properties.

## **RESEARCH METHODOLOGY**

The methodology employed in this study focuses on a qualitative research approach that primarily examines relevant laws and decided cases. An extensive review of legal statutes, regulations, and precedent-setting cases in the Malaysian context was conducted to gain insights into latent defects, the defects liability period, and legal action deadlines. This study also conducts document analysis of data recorded by the Ministry of Housing and Local Government (*Kementerian Perumahan dan Kerajaan Tempatan, KPKT*) between the years 2018 and 2022 with regard to claims in the Tribunal for Homebuyer Claims (THC). This data analysis is essential in providing a comprehensive understanding of the legal frameworks and judicial interpretations surrounding these aspects of constructed properties for Malaysian homebuyers and the practical realities of the surrounding issues. A comparative analysis of the statutory provisions and case reports from the UK is also conducted to provide insights into the legal framework of latent defect and Defect Liability Period laws in the said jurisdiction.

## **ANALYSIS AND DISCUSSION**

### **Defect Liability Period under Act 118**

The Defect Liability Period (DLP) refers to the duration during which a contractor retains liability for rectifying any detected defects. The assessment of the adequacy of this period revolves around its capacity to accommodate the emergence of both patent and latent defects. Predominantly, deficiencies arise from inadequate workmanship and the utilisation of substandard materials throughout the construction process (Oluwole et al., 2012). The DLP under Act 118 establishes a specific timeframe, i.e. at 24 months from the date of delivery of vacant possession under Schedules G, I, H and J of Act 118, during which developers bear the responsibility for addressing defects in constructed properties. After the delivery of vacant possessions, homebuyers are required to inspect the property for any defects, damage, or poor workmanship. If any defects are found, homebuyers need to submit a written complaint to the developer or management office, requesting the necessary repairs at the developer's cost. To safeguard the homebuyer's interests, 5% of the purchase price is retained by the stakeholder solicitors, as specified in the statutory Sale and Purchase Agreement (SPA) between the developer and the homeowner prescribed under Act 118. This 5% retention sum (less the cost for repair works done, if any) will eventually be fully released to the developer after the expiry of the DLP.

Defects covered under the DLP may include any faults arising from defective workmanship or materials, as well as deviations from the approved plans and descriptions. As stated in Clause 27(1) or 30(1) of the SPA, respectively, the developer is obligated to repair and rectify such defects within 30 days of receiving a written notice from the homeowner. If the developer fails to rectify the defects within the given timeframe, homebuyers have the right to engage their own contractor to carry out the repairs. The cost of repairs must be communicated to the developer before commencing the works, giving them an additional opportunity to fulfill their obligations to repair. From the context of the homebuyers' right to take legal action against the developer for failure to make good of defects, the time frame is limited to 24 months from the date of delivery of vacant possession. However, at times there are cases where defects to the property may only appear after the expiry of the DLP which is known as 'latent defects. In such situations, it becomes vital for homebuyers to understand their rights to hold the developer accountable for the defects.

Section 16B of Act 118 establishes the Tribunal for Homebuyer Claims to enable disgruntled homebuyers to file a claim against housing developers without going to the courts (Latif, 2002). By virtue of section 16M, subject to sections 16N and 16O, the Tribunal shall have jurisdiction to determine a claim lodged under section 16L where the total amount in respect of which an award of

the Tribunal is sought does not exceed RM50,000. The limitations placed under section 16N include:

- (i) It cannot handle claims regarding land recovery or disputes over wills, settlements, goodwill, choses in action, or intellectual property rights.
- (ii) Its jurisdiction is specifically for claims arising from sale and purchase agreements between a homebuyer and a licensed housing developer.
- (iii) Homebuyers must file claims within 12 months from the issuance of the certificate of completion and compliance, the expiry of the defects liability period, or the termination of the sale and purchase agreement.
- (iv) If there is a prior dealing between the homebuyer and the developer regarding the housing, the absence of a sale and purchase agreement at the time of the claim doesn't affect it.
- (v) The Tribunal cannot address claims related to personal injury or death.

Under section 16O, despite claims or issues exceeding RM50,000, the Tribunal can still hear and decide on them if there is a written agreement between the parties granting the Tribunal jurisdiction. Such an agreement can be made either before lodging a claim or even after a claim has been lodged but before the Tribunal has recorded an agreed settlement or made a determination. According to the statistics published by the Ministry of Housing and Local Government (*KPKT*) in 2023, the number of cases registered and solved by the Tribunal from 2018 to 2022 are as follows:

**Table 1:** Cases Registered and Settled by the Tribunal for Homebuyer Claims (2018 – 2022)

<b>Year</b>	<b>Case registered</b>	<b>Case settled</b>
2018	1,523	1,828
2019	2,356	2,232
2020	1,330	885
2021	1,352	1,540
2022	1,348	1,265

*Source: KPKT (2023) KPKT Statistics.*

While the statistics do not expressly provide data regarding cases involving latent defects, the data classifies the cases into technical and non-technical claims. Technical claims typically cover issues relating to defective workmanship, defects in construction materials, and non-compliance with the

building plans and specifications in the sale and purchase agreement as documented in *Remeggiious Krishnan v SKS Southern Sdn Bhd [2023] 1 LNS 352*.

The statistics in 2022 regarding non-technical claims which cover defects are as follows (KPKT, 2023):

**Table 2: Technical Claims Registered and Settled by the Tribunal for Homebuyer Claims (Jan – Dec 2022)**

Month	Case registered	Case settled
January	19	63
February	20	75
March	10	26
April	20	21
May	7	16
June	15	19
July	13	25
August	12	21
September	24	28
October	13	33
November	12	22
December	27	20
<b>TOTAL</b>	<b>192</b>	<b>369</b>

*Source: KPKT (2023) KPKT Statistics.*

The number of cases according to States is shown as follows (KPKT, 2023):

**Table 3: Technical Claims Registered and Settled by the Tribunal for Homebuyer Claims by States (Jan – Dec 2022)**

State	Case registered	Case settled
Johor	44	47
Kedah	7	7
Kelantan	0	2
Melaka	4	2
Negeri Sembilan	1	3
Pahang	21	17
Perak	16	19
Perlis	1	1
Penang	10	20
Sabah	0	0
Sarawak	0	0
Selangor	61	113
Terengganu	2	4
Federal Territories	25	134
<b>TOTAL</b>	<b>192</b>	<b>369</b>

*Source: KPKT (2023) KPKT Statistics.*

### **Latent Defects under Act 254**

“Defect” simply means the lack or absence of something essential to completeness per Bruce J in *Tate v Latham & Son [1987] 1 QB 506*. In this case, the court made a distinction between “patent defect” and “latent defect”. A patent defect is one that is readily noticeable which can be imposed upon the buyer and typically stems from what is visibly evident or implied by it. Therefore, it would not be equitable to expect the purchaser to uncover all potential issues through extensive investigation beyond what is visibly apparent. Thus, the buyer should only be responsible for defects that are obvious upon inspection, including those that are a direct result of what is visibly discernible. Conversely, latent defects are hidden flaws or faults in constructed properties that are not easily discovered and may not be immediately apparent or observable during the initial inspection or handover or within the DLP. They often surface years after a building's completion or occupation which exceeds the DLP (Zolkafli et al., 2014).

In *Sanderson v National Coal Board [1961] 2 All ER 796* at 799, Holroyd Pearce LJ developed basic principles regarding defects:

- (i) Defect is defined as failure of the product to meet an objective standard of safety that the court must evaluate.
- (ii) The test for determining if a product is defective depends on whether its safety falls below the standards that public are entitled to expect. The test is objective in nature. Safety standard is measured based on the legitimate expectation of the public.
- (iii) The assessment of legitimate public expectation requires consideration of all pertinent factual and legal circumstances. This evaluation must occur at the point when the product was supplied.
- (iv) When determining whether a product meets the expected safety level, the court may consider all relevant information available at the time of evaluation, regardless of whether the information was available at the time of the sale or has been discovered later.
- (v) The onus is on the buyer to establish defect and a causal link to the injury he suffers due to the defect.

In Malaysia, Section 6 of Limitation Act 1953 (Act 254) deals with the general limitation period for civil actions founded on tort or breach of contract. It establishes a general limitation period of six years for most civil claims, including claims related to latent defects, from the date the cause of action accrued. This means legal action must be initiated within this timeframe to preserve the right to seek remedies. Section 6 applies to actions founded on contract or tort, which includes claims for damages arising from civil wrongs negligence, nuisance, or trespass. It also covers actions related to the recovery of possession of land,

enforcement of charges, and actions to recover sums under written laws (excluding penalties or forfeitures). The limitation period is enacted primarily to dissuade litigants from neglecting their legal rights over time and to mitigate the uncertainties and potential anxieties associated with intentional delays in legal action (Balan, 2013).

Section 6 of Act 254 and DLP prescribed under the statutory SPA, means that while the DLP provides a specific time frame for reporting and rectifying defects, it does not override the stipulated limitation period. The DLP serves as a contractual agreement between the developer and the homebuyer, establishing the developer's responsibilities and obligations regarding defects during that period. However, if latent defects are discovered after the expiration of the DLP but within the six-year limitation period under Section 6, homebuyers will still have the right to pursue legal remedies for those defects against the developer. The rule of statutory construction necessitates the harmonisation of the legislation to maintain legal order, certainty, and consistency with legal norms in various forms of legislation (Sitorus et al., 2018).

### **Judicial Interpretation of Latent Defects and Defect Liability Period in Malaysia**

Before 2019, there were several decided cases that emphasised the rights of homebuyers over latent defects against the developers. The court in *Paramount Gardens Sdn Bhd v Triple Well Sdn Bhd [2004] 3 MLJ 478*, addressed the issue of latent defects and the duty of the developer to rectify them. It ruled that the defect liability period provided under the housing development agreement was a crucial time frame for homebuyers to report and seek redress for latent defects. The Court of Appeal in *AmBank (M) Bhd v Abdul Aziz Hassan & Ors [2010] 3 MLJ 784* (Abdul Aziz's case) ruled that section 6(1)(a) of the Limitation Act serves as an absolute bar, and the courts do not possess the authority to extend the limitation period; such prerogative is reserved for Parliament. It was further decided in *Chip Aik Construction Sdn Bhd v Tan Saw Keow [2012] 7 MLJ 323*, that in solving the dispute of latent defects in a property, the court upheld that homebuyers must initiate legal action within the prescribed timeframe to preserve their rights.

The decisions made in the abovementioned cases were criticised for not adequately addressing the potential injustice caused by latent defects. This omission raised concerns about the fairness of outcomes for parties affected by such defects. The case of *AmBank (M) Bhd v Kamariyah bt Hamdan & Anor [2013] 5 MLJ 448* (Kamariyah) marked a notable departure from the strict interpretation which recognised the potential unfairness of adhering strictly to the limitation period if the damage was not reasonably discoverable within that timeframe. The court acknowledged that latent defects may only become

apparent after a significant period of time and that it is crucial to consider the discoverability of the damage. The Court of Appeal in *Kamariyah* introduced the concept of the "discoverability rule" to mitigate the potential unfairness resulting from a strict interpretation of section 6(1)(a) of the Limitation Act in the earlier case of *Abdul Aziz*. The discoverability rule suggests that the limitation period should commence from the date when the damage was discovered or when it ought to have been discovered.

Another case that highlights the application of the "discoverability rule" in the context of latent defects is *The Ara Joint Management Body v Mammoth Land & Development Sdn Bhd [2017] MLJU 631*. The case is about the discovery of latent defects in the buildings of The Ara Bangsar Development which came to light in 2014, seven years after the completion of construction in 2007. The joint management body of the development, acting on behalf of the residents, filed a lawsuit against the developer for latent defects in October 2016, a total of nine years after the completion of construction. While the developer relied on *Abdul Aziz's* case to seek the dismissal of the claim on the grounds that it was time-barred, the court, however highlighted and applied the "discoverability rule" in the context of latent defects. It was decided by the court that the limitation period for filing a claim related to latent defects starts running from the time when the defects are reasonably discoverable, rather than from the time of the property's completion or delivery. This decision recognised the importance of considering the actual knowledge or reasonable discovery of the defects by the affected party, providing flexibility in determining the starting point for the limitation period in cases involving latent defects. The case of *Dua Residency Management Corporation v Edisi Utama Sdn Bhd & Anor [2021] LNS 174* further affirmed the findings in *Kamariyah* that the cause of action will not accrue unless the defects have first been discovered.

While the Malaysian courts applied the initial strict enforcement of the six-year limitation period for claims regardless of whether the damage was known or discoverable, the case of *Kamariyah* brought about a shift in the courts' approach by introducing the "discoverability rule." This rule emphasised the importance of considering the actual discovery or when the damage should have reasonably been discovered. This development signifies the courts' recognition of the need to consider the practical aspects of latent defect claims and ensures a fairer assessment of when the limitation period should begin.

### **Judicial Interpretation in the UK**

In reference to the UK's development on latent defects claims, a notable case that demonstrates this predicament is *Pirelli General Cable Works Ltd v Oscar Faber & Partners (1983) 2 AC 1* where a factory suffered damage due to the incorrect usage of construction material in the chimney. Although the chimney was

constructed in 1969, the faulty condition was only discovered in 1977, and legal action was initiated in 1978. The central issue revolved around whether the six-year limitation period should commence from the date of construction or when the fault could have been or was discovered. The House of Lords held that the cause of action in tort for damage resulting from negligent design or construction of a building arises at the point when the damage occurs, not when it is discovered or should have been discovered through reasonable diligence. Since the cracks in the chimney had formed no later than April 1970, which was more than six years prior to the claim, the action was barred by statutory limitation.

In *Ketteman and Others v Hansel Properties Ltd [1985] 1 All ER 352*, the court held that the plaintiffs' claims against the architects and the local authority were not time-barred, as the cause of action arose when the physical damage to their houses manifested, namely, when cracks appeared in the walls in August and September 1976. This occurrence fell within the six-year limitation period starting 27 May 1974. It was considered rare for a building to be deemed 'doomed from the start'. Additionally, the defendants could not invoke a limitation defence based on economic loss resulting from faulty foundations, as such loss could not give rise to a cause of action until physical damage occurred, unless the houses were deemed doomed from the outset.

In *London Borough of Bromley v Rush & Tompkins Ltd and Another 4 (1985) ConLR 44*, the issue was on the date of the accrual of a cause of action in tort for damage caused by the negligent design or construction of a building. Bromley brought forth claims against Rush & Tompkins for negligence and breach of statutory duty in constructing Sherman House, as well as against consulting engineers Shepherd for negligence in design or failure to ensure compliance with specifications. Sherman House, a large office block made of reinforced concrete, was completed around 1967, with Bromley occupying it in 1968. By 1975, cracks were observed in the exterior, and a detailed inspection in early 1976 revealed severe cracks indicating potential concrete spalling, posing a risk to pedestrians. Consequently, extensive remedial work was undertaken in 1977, with Bromley seeking damages for the expenses incurred. The court determined that the damage occurred when hairline cracks in the concrete, caused by corrosion of the steel reinforcement, appeared, which based on evidence, transpired before 5 March 1974. Thus, the cause of action arose more than six years before the writ was issued on 5 March 1980, rendering Bromley's claim statute barred.

To address the perceived harshness resulting from the decision in *Pirelli's* case, the UK Latent Damage Act 1986 was enacted. This legislation aimed to amend the laws in the UK to provide a fairer approach to latent defect claims by introducing the concept of discoverability and allowing the limitation period to be calculated from the date when the damage could have reasonably

been discovered. These amendments were intended to strike a balance between the interests of claimants and defendants in latent defect cases, recognising the challenges posed by defects that may not become apparent until years after construction or occupancy (Mullany, 1991). The Latent Damage Act 1986 introduced sections 14A and 14B into the Limitation Act 1980. Section 14A permits a claim to be initiated within six years from the accrual of the cause of action or within three years from the discovery of a defect, with a maximum period of 15 years from the date of negligence under section 14B. This legislation, effective from 18 September 1986, does not extend to personal injury cases but applies to situations where damage resulting from negligence is discovered after the expiration of the standard limitation period. Its purpose was to address perceived injustices arising when hidden damage remains concealed long after the typical limitation period has elapsed (Butterworths, 2023).

The application of the Latent Damage Act 1986 can be seen from the case of *Horbury v Craig Hall & Rutley [1991] CILL 692* where the defendant's surveyor conducted a survey negligently for the claimant. Minor errors were initially identified and rectified by the claimant without resorting to legal action. However, more significant errors emerged over three years after the survey, prompting the claimant to initiate legal proceedings. It was held that the three-year limitation period stipulated by the Latent Damage Act 1986 commenced upon the defendant's knowledge or deemed knowledge of the negligent survey, rendering the claim time-barred. The claimant's argument for a separate limitation period for the later discovered, more serious defects was unsuccessful; thus, was not permitted to abandon the earlier claims in favour of the later ones.

### **Latent Defects and DLP After 2019 in Malaysia**

The decision in *Pirelli's* case carries persuasive value for Malaysian courts since Section 2 of the UK Limitation Act 1939 is similar to Section 6(1) of Act 254. The law on latent damage in West Malaysia is re-defined with the coming into force of the amendment to the Limitation Act 1953 on 1 September 2019, brought about by the Limitation (Amendment) Act 2018 (Amendment Act). Section 5 of the Amendment Act provides that Section 6A of the Act shall only apply to all action or proceedings for latent damage effective from 1st September 2019 and subject to the following criteria:

- (i) the claim is for negligence not involving personal injuries;
- (ii) the person having the cause of action have the knowledge required for bringing an action for damages in respect of the relevant damage, and a right to bring such action;
- (iii) the action is brought within three (3) years from the date the damage was discovered; and

- (iv) the fifteen (15) years limitation period under Section 6A(3) has not passed.

Thus, in the context of DLP, this provision allows a homebuyer to bring action against a developer for defects in the property within three years from the earliest date they have of such knowledge. This means that even if six years have passed since the defect occurred, the homebuyers still could file a claim within three years of discovering the defect. However, Section 6A(3) imposes a 15-year time limit for initiating legal action. This means that a homebuyer cannot commence proceedings 15 years after the cause of action arises. The cause of action can be based on a breach of contract (when the breach occurred) or tort (when the damage occurred). It is crucial to note that the homebuyer still has a responsibility to exercise reasonable diligence in discovering any damage as Section 6A(4)(b)(iii) indicates that the owner should have acquired knowledge about the damage from his observation or ascertainable facts or through appropriate expert advice that it was reasonable for them to seek.

The application of Section 6A of the Limitation Act in the context of the application of a defect liability period in construction cases are illustrated as follows:

*Illustration 1 - AA purchased a house from BB, a developer in 2000. In 2005, AA discovered a crack that had caused significant damage to the walls. Upon investigation by an expert, it was revealed that the cracks had occurred in 2002, which was two years after AA had moved into the house. According to Section 6A (2), AA has a three-year limitation period from the time of discovery of the damage in 2005 to file an action in court against BB for damages. This means that AA must initiate legal proceedings within three years from the time they became aware of the crack. If AA fails to file the action within this timeframe, their right to seek compensation may be barred by the limitation period.*

*Illustration 2 - YY purchased a house from ZZ in 2000. It was only in 2017 that YY discovered a crack that had caused significant damage to the walls. After conducting a building report, it was revealed that the cracks had actually occurred in 2001, one year after C had moved into the house. In this case, YY cannot commence legal action against ZZ because they have already exceeded the 15-year limitation period outlined in Section 6A (3). According to this section, the right to file a legal action for damages resulting from a latent defect expires 15 years from the date the cause of action accrued. Since the cracks occurred one year after YY moved into the house in 2000, the 15-year limitation period would have expired in 2016, before YY even discovered the damage. Consequently, YY*

*is unable to initiate legal proceedings against ZZ due to the expiration of the limitation period.*

In *Cekap Mesra Development Sdn Bhd v Che Seman bin Abdullah [2021] MLJU 2292*, the plaintiff found many defects in the property bought from the defendant based on a sale and purchase agreement (SPA) dated 6 March 2000. The said property was completed in 2002 and vacant possession was delivered to the plaintiff on 7 June 2002. Despite the rectification by the defendant, the plaintiff claimed that the defects continued to reoccur. In 2009, the plaintiff engaged an engineer to investigate the causes of the recurrence of the defects and was informed on 15 April 2009 that the defects were caused by the failure of structural support for the dead and live loads of the said property. The plaintiff then made complaints to the Ministry of Housing and several local authorities about those findings concerning the ill-constructed structural support of the said property, which was built by the defendant, but to no avail. He spent almost 10 years seeking resolution to his grievances after he discovered the defects in 2009 while continued paying the housing loan. In allowing the defendant's appeal, the High Court made the following observations:

- (i) The plaintiff failed to clearly plead in the statement of claim of his cause of action against the defendant. Although the plaintiff's counsel's submission seemed to suggest that the claim was premised on the breach of SPA, there was no clear statement to the same effect in the statement of claim.
- (ii) The statement of claim also failed to disclose any cause of action of a tort action. The statement of claim failed to particularise the defendant's duties and the breach of duties, if any.
- (iii) The defect liability period had ended on 7 December 2003. Assuming that the defendant failed to rectify the defects within the period, the cause of action could have arisen against the defendant under clause 23 of the SPA. The limitation period for a case arising from the contract would end on 7 December 2009. The plaintiff filed his action in January 2021.
- (iv) Assuming that the action was based on the tort of negligence, it was still barred by the six-year limitation.
- (v) Even if the Court were to apply the specific provision of section 6A, the action is still time-barred. The section may, in the circumstances set out in the section, defer the limitation period to such time the plaintiff could have acquired the knowledge for bringing the action and the right to bring such action.

However, the determination of the date on which the cause of action accrued is still important for purposes of section 6A. In the present case, the absolute latest date that the plaintiff could have discovered and acquired the knowledge for bringing the action and the right to bring such action was at the time he was informed of the cause of the recurrence of the defects on 15 April 2009. Applying Section 6A (2) read together with Sections 6A(4)(a) and 6A(4)(b) of the Limitation Act, the plaintiff was allowed to take out an action within three years from 15 April 2009. The limitation period under Section 6A would have set in by 15 April 2012. Hence, even if the deferred limitation period is applicable, the plaintiff's action is still time-barred.

### **CONCLUSION**

In conclusion, the application of Section 6A of Act 254 within the framework of a defect liability period in real property construction cases offers an extended timeframe for homebuyers to initiate legal action pertaining to latent defects. While the defect liability period establishes a specific duration during which developers are accountable for rectifying defects, Section 6A introduces a broader limitation period. It serves to mitigate potential injustices by granting homebuyers the opportunity to pursue legal remedies for latent defects against the developer even after the defect liability period has expired. It provides an extended timeframe to identify and address hidden defects that may not have become apparent within the initial defect liability period. Under the new provision, the homebuyers can bring actions against developers for latent defects within three years from the time they discovered the damage regardless of the time that has passed since the defect occurred. However, the homebuyers could not initiate legal proceedings more than 15 years after the date of cause of action occurred. The interaction between the defect liability period and the limitation period introduced in Section 6A establishes a balanced approach, allowing for the responsibilities of developers and the rights of homebuyers to be upheld.

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